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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-3391

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No. .....

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UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals For the Second Circuit

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on May 1, 1974.

Opinions Below

The opinion of the United States Court of Appeals for the Second Circuit, not yet officially reported, appears unofficially at 89 LRRM 2303. It is appended at App.A, pp. 1a-9a, *infra.* The opinion of the United States District Court

for the Western District of New York appears at 386 F.Supp. 405. It is appended at App.B, pp. 10a-19a, *infra.*

Jurisdiction

This Court has jurisdiction under 28 USC § 1254(1). The judgment of the United States Court of Appeals for the Second Circuit was entered on May 1, 1975. On July 23, 1975, Thurgood Marshall, an Association Justice of this Court, granted Petitioner's application and extended the time for filing this petition to and including September 2, 1975 (Order A-73).

Question Presented

If a union which represents one employee bargaining unit, and the employer, enter into a binding collective bargaining agreement that contains both a mandatory arbitration procedure to resolve disputes between the employer and the union arising out of the agreement, and an unequivocal "no strike" pledge, but the union orders employees in this bargaining unit to stop work and to honor a strike and picketing established by the same union, on behalf of another bargaining unit of employees employed by the same employer at the same facility, does a federal district court have the authority under § 301 of the Labor Management Relations Act to enjoin the union's sympathy strike conduct and to compel arbitration of the dispute as to whether the union's conduct violates the collective bargaining agreement?

Statutes Involved

This case involved § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, as well as § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a). These provisions are set forth at App.A, pp. 2a, 3a, footnotes 1 and 2, *infra.*

Statement of the Case

Federal Jurisdiction

The Buffalo Forge Company, petitioner, pursuant to § 301 of the Labor Management Relations Act (29 U.S.C. § 185), brought this action against the United Steelworkers of America ("International Union"), two affiliated local unions and various officers and agents of those labor organizations, for compensatory damages and other relief, including injunctive relief and an order directing arbitration, as a result of the unions' alleged breach of no strike clauses contained in an effective collective bargaining agreement to which all parties to this action are currently bound.

Statement of Facts

The Company is engaged in the manufacture and sale of pumps and air handling equipment at three separate plants and office facilities in the Buffalo, New York area. For many years, the International Union and its affiliated locals 1874 and 3732 have represented the Company's production and maintenance employees under successive collective bargaining contracts. The current contract, by its terms, remains in full force and effect until September 28, 1975.

The International Union and two other affiliated local unions (not parties to this action) represent the Company's office clerical and technical employees who are employed at the Company's three Buffalo area facilities. On November 16, 1974, in negotiating their first agreement with the Company, the International Union and the office-technical local unions struck the Company and established picket lines at all three of the Company's Buffalo area facilities. That strike and picketing by the International Union and the office-technical locals are bona fide, primary and legal, and is continuing.

On November 18, 1974, the production and maintenance employees at one of the plants refused for the day to cross the picket lines there. On November 20, 1974, the Company learned that a production and maintenance employee work stoppage at all three plants was scheduled by the respondent unions for the following morning. The Company sent telegrams to officers of the unions, which set forth the Company's position that a work stoppage would be in violation of the collective bargaining agreement, and offered to arbitrate any dispute involved.

From November 21 through December 15, 1974, at the admitted direction and instruction of the International Union, the local unions and the production and maintenance employees honored the picket lines and engaged in a work stoppage at all three of the Company's plant facilities. Manufacturing operations at the Company's three plants were completely halted. The production and maintenance employees returned to their jobs on Monday, December 16th; the next regular work day after the district court issued its Decision and Order denying the Company's request for a preliminary injunction.

There are currently, and at all times material herein, labor agreements covering the production and maintenance employee bargaining units. The agreements are between the Company and United Steelworkers of America, AFL-CIO, on behalf of itself and members of the local unions. The collective bargaining agreements are valid and apply to the dispute herein. These agreements are signed by representatives of both the International and local unions, as well as the Company.

The agreements provide a mandatory six-step dispute settlement procedure ending in binding arbitration.[1] The "no strike" clause is incorporated in a section entitled "Responsibilities of the Parties".[2] The agreements also contain a

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[1] In part, the grievance-arbitration clause reads:

> 26. Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately in the following manner:
>
> • • •
>
> 32. Sixth. In the event the grievance involves a question as to the meaning and application of the provisions of this Agreement, and has not been previously satisfactorily adjusted, it may be submitted to arbitration upon written notice of the Union or the Company. Such notice shall be served upon the other party within five (5) working days after receipt of the answer in the Fifth (5th) Step. The party requesting arbitration shall apply to the Federal Mediation and Conciliation Service for an arbitrator, who shall be jointly selected by the parties. The arbitrator shall not have the power to add to, to disregard or modify any of the terms and conditions of this Agreement. The decision of the arbitrator shall be binding upon the parties. The expenses of arbitration and the compensation for services rendered by the arbitrator shall be shared equally by the parties.

[2] Section III
Responsibilities of the Parties

> 11. Each of the parties hereto acknowledges the rights and responsibilities of the other party and agrees to discharge its responsibilities under this Agreement.
>
> 12. The Union (its Officers and representatives at all levels) and all employees are bound to observe the provisions of this Agreement.
>
> 13. The Company (and its Officers and representatives at all levels) is bound to observe the provisions of this Agreement.
>
> 14. In addition to the responsibilities that may be provided elsewhere in this Agreement, the following shall be observed:
>
> a. The Union and its members will not solicit membership on Company time.

(Footnote continued on following page.)

"management clause"[3], and the following clause pertaining to instructions to report for work:

> 22. (a) Any employee who works on a regular work day at his regular work is deemed to be instructed to report for work on the next succeeding scheduled work day *unless the Company* notifies the employee not to report for work, with notice also to the Union. [Emphasis added]

The Proceedings Below

The Company appealed the district court's denial of injunctive relief. On May 1, 1975, the United States Court of Appeals for the Second Circuit affirmed the order of the district court. The Appeals Court decision is appended at App. A, *infra*.

(Footnote continued from preceding page.)

b. There shall be no strikes, work stoppages, or interruption or impeding of work. *No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity.* The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union Officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such conduct and shall not result in any disciplinary actions against the Officers, committeemen or stewards involved. [Emphasis added].

c. There shall be no discrimination, restraint or coercion against any employee based on consideration of race, creed, color, sex, age, national origin or membership in the Union.

d. There shall be no lockout.

[3] 43. Subject to the provisions of this Agreement, the management of the plant and the direction of working forces including the right to hire, suspend or discharge for proper cause, transfer and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company.

REASONS FOR GRANTING THE WRIT.

I. The decision below incorrectly construed and applied federal labor policy in conflict with this Court's holdings in *United Steelworkers v. Warrior & Gulf Nav. Co.; Boys Markets v. Clerks Union; and Gateway Coal Co. v. Mine Workers.*

Congress passed the *Norris-LaGuardia Act* in 1932, as a reaction to the wide-spread misuse by federal courts of injunctions in certain labor-management controversies. The Act prohibited federal courts from issuing injunctions in "labor disputes" and provided strict procedural safeguards in those cases wherein injunctions were appropriate.[4] The wording of the Act itself reveals that the core purpose of the Statute was to eliminate jurisdiction of the federal courts over *lawful* strikes in labor disputes. Injunctions are still appropriate when "unlawful acts have been threatened . . . or have been committed . . ."[5]

As evidenced by the passage of the *Labor Management Relations Act*, in 1947, a federal policy had emerged "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements" *Avco Corp. v. Local 787*, 459 F. 2d 968, 970 (3d Cir. 1972).

Section 203(d) of that Act provided that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement".[6]

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[4] 29 U.S.C. §§ 107-112. *Emery Air Freight Corp. v. Local 295 Teamsters*, 449 F.2d 586 (2d Cir. 1971); Cert. denied 405 U.S. 1006.

[5] 29 U.S.C. § 107(a).

[6] 29 U.S.C. § 173(d).

Section 301(a) of that Act granted federal courts jurisdiction over "suits for violation of contracts between an employer and a labor organization".[7] Section 301 has been interpreted as a grant of jurisdiction to federal courts to order specific performance to enforce arbitration provisions in labor agreements. *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957); *ITT, Inc. v. Communications Workers*, 422 F. 2d 77 (2d Cir. 1970).

In the twenty-seven years since these statutes were enacted, this Court has formulated an expansive body of federal labor relations law, grounded upon the basic statutory premise that industrial stability is best fostered by the substitution of arbitration for strikes. The Court has acknowledged that:

> Complete effectuation of the federal policy is achieved when the agreement contains both an arbitration provision for all unresolved grievances and an absolute prohibition of strikes, the arbitration agreement being the "quid pro quo" for the agreement not to strike.[8]

If a labor agreement contains a broad no-strike clause, a claimed breach and the scope of the prohibition are proper subjects for arbitration.[9]

> "The rule is that unless the parties expressly exclude a matter, the Court will conclude that they intended to submit it to arbitration."[10]

[7] 29 U.S.C. § 185(a).

[8] *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 578, Fn. 4 (1960).

[9] *Drake Bakeries, Inc. v. Local 50, American Bakery and Confectionary Workers*, 370 U.S. 254 (1962); *H. K. Porter Co., Inc. v. Local 37, United Steelworkers of America*, 400 F.2d 691 (4th Cir. 1968); *Teamsters Local 174 v. Lucas Flour Co.*, 396 U.S. 95 (1962).

[10] *Monroe Sandler Corp. v. Livingston*, 377 F.2d 6, 9-10 (2d Cir. 1967); Cert. denied 389 U.S. 831 (1967).

Under *Steelworkers v. Warrior & Gulf, supra:*

> ". . . an order to arbitrate the particular grievance should not be denied unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."[11]

The applicable labor agreements in this case clearly spell out a broad, unequivocal prohibition which the unions violated. Section 26 contains an explicit prohibition of work stoppages concerning contractual grievances. Section 14 b., a section containing no explicit references to any other term of the agreement, prohibits all strikes, work stoppages, interruptions and impeding of work during the term of the agreement; and prohibits authorization, instigation, aid or condonation of "any such activities" by officers or representatives of the International and local unions. The *only* express contractual exception to these prohibitions are "unsuccessful efforts" by union agents to prevent and terminate wildcat strikes.

These agreements also provide for final and binding arbitration of disputes (whether raised by the Company, the Unions or employees) "as to the meaning and application of the provisions of this agreement" as well as disputes which arise out of "trouble of any kind . . . in the plant". These provisions are certainly broad enough to cover the underlying controversy herein.

In *Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970), this Court recognized that a pro-arbitration policy would be frustrated unless the federal courts possessed the power to compel arbitration if the agreement to arbitrate the dispute could be established and if an injunction would have been proper but for *Norris-LaGuardia*. The holding was made in a factual context in which the union had engaged in a

[11] 363 U.S. 574, 582-583.

strike in furtherance of a grievance initiated by the union over the interpretation and application of certain contract provisions.

More recently, this Court expanded the *Boys Markets* holding in *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974). There, the Court applied the presumption of arbitrability to "safety disputes" even though such disputes were not specifically referred to in the grievance and arbitration provision of the agreement; and it enjoined the work stoppage even though Section 502 of the ***Labor Management Relations Act*** was asserted to be a statutory grant of a right to engage in a work stoppage.[12]

The Second Circuit has adopted a narrow reading of the *Boys Markets* holding. Its Opinion is replete with indications that union-induced work stoppages are enjoinable only when the stoppage is *over* a contractual grievance initiated by the Union or employees. Thus, it has adopted a "double standard" of arbitrability, which presumes union or employee initiated grievances *are* arbitrable but employer initiated grievances over disputed contract provisions *are not.*

The Second Circuit's holding that the grievance must be the underlying cause of the stoppage construed *Boys Markets* too literally. First, it fails to consider the factual context in which this Court's decision was rendered. Second, "it makes little sense to argue that because the work stoppage precipitated the dispute, it was not a work stoppage 'over' a grievance which the parties were contractually bound to arbitrate".[13] Finally, since binding and enforceable bargaining agreements serve the interests of both labor and management in day to day in-

[12] Similarly, and in view of the agreement provisions herein, the respondents' reliance on Section 7 of the *National Labor Relations Act* is misplaced. *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71, 80 (1953).

[13] *Valmac Industries, Inc., supra*, at 89 LRRM p. 3076. This is especially true where, as here, the company offered to arbitrate the union sympathy strike plan before the stoppage occurred.

dustrial relations, the legislative purposes of Section 301 are impaired, and strong incentives against participating in meaningful bargaining are encouraged by the decision below. The institution of collective bargaining, so critical to the core purposes of national labor policy, as well as the cause of industrial peace, are disserved by breach of contract strikes. Refusing to *enforce* the bargaining agreement was *not* one of the purposes of *Norris-LaGuardia.*

Requiring the parties to submit the merits of the claimed breach of contract to their own dispute resolving procedures encourages utilization of those procedures. A narrow inquiry into whether a strike in breach of contract *was caused* by an arbitrable matter, based on an assumption that only an order requiring arbitration of the precipitating cause of the strike can encourage arbitration, misses the point. What can be more fundamental to a collective bargaining relationship than the scope of a no-strike obligation? Should not the parties be required to resort to the settlement procedures of their relationship to determine the scope of their bargain? In fact, if encouraging and promoting labor arbitration is one of the goals of Section 301, its utilization is fully encouraged when ordered in those cases where the arbitrable dispute may not be the precipitating cause of the work stoppage; but, rather, the work stoppage itself is of questionable validity under the bargaining agreement. A dispute of that nature goes to the very heart of the collective bargaining relationship and labor arbitration would seem particularly well suited to resolve the difficulty.

Because the *Boys Markets* remedy is so deeply anchored as an aid to arbitral jurisdiction, judicial relief in the nature of specific performance of no-strike obligations without referring the merits of the dispute to arbitration is not warranted. In this context, therefore, *Norris-LaGuardia* retains its vitality; depriving courts of authority to specifically enforce no-strike obligations, where the risk of judicial in-

tervention into the merits of the labor dispute in injunction proceedings is great because the parties have deprived arbitration of jurisdiction to resolve the merits of that dispute.

II. The decision below presents an important federal question on which the Courts of Appeals are in direct conflict.

The issues presented here have caused division among the circuit Courts of Appeals. Under similar factual circumstances, some jurisdictions have concluded that the work stoppage ("sympathy strike") must be *over* a grievance which both parties are contractually bound to arbitrate before the precepts of this court's decision in *Boys Markets* can attach.[14] If this were not so, it is contended, every work stoppage would be enjoinable when the collective bargaining agreement contains a no-strike provision and, thus, the policy of *Norris-LaGuardia* will be virtually obliterated.

On the other hand, other jurisdictions have not construed the *Boys Markets* refinement of federal labor policy so narrowly.[15] These courts enjoined the sympathy strike where the contractual legality of the work stoppage itself is the underlying arbitrable question. The dominant federal labor policy favoring the peaceful settlement of such labor con-

[14] See cases cited in footnote 3 of the Second Circuit's opinion, App. A, *infra*. See also: ***Hyster Co. v. Independent Towing and Lifting Machine Assn.***, ...F.2d.... (6th Cir. July 7, 1975); and ***Plain Dealer Publishing Co. v. Typographical Union No. 53, et al.***, ...F.2d.... (7th Cir. 1975).

[15] See cases cited in footnote 3 of the Second Circuit's opinion, App. A, *infra*. See also: ***Valmac Industries, Inc. v. Food Handlers Local 425***, ...F.2d.... (8th Cir. July 29, 1975); 89 LRRM 3073; ***Armco Steel Corp. v. UMWA***, 505 F.2d 1129 (4th Cir. 1974); ***Island Creek Coal Co. v. UMWA***, 507 F.2d 650 (3d Cir. 1975); ***Pilot Freight Carriers Inc. v. Local 391 Teamsters***, 497 F.2d 311 (4th Cir. 1974); Cert. denied 419 U.S. 869 (1974); ***Wilmington Shipping Co. v. International Longshoremen's Association***, ...F.2d...., (4th Cir. 1974); 86 LRRM 2846; Cert. denied 95 S.Ct. 498 (1974).

troversies by binding arbitration, it is contended, does not sacrifice the core purpose of *Norris-LaGuardia* and could otherwise leave the employer virtually helpless to compel the union to honor its agreement to arbitrate rather than strike.

The Second Circuit opinion explicitly recognizes the significance of the issues here: "This appeal raises a narrow but significant question of labor law of first impression in this court . . .". The conflict in the circuits seriously offends the requirement for uniform interpretation of the federal pro-arbitration policy. Clearly, the issue is a recurrent one affecting millions of workers and employers in every circuit in the nation. The extent of the disagreement among the circuits can be resolved only by this Court.

Conclusion.

For the reasons stated above, this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

Opinion and Judgment of the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS
For the Second Circuit

No. 829—September Term, 1974.
(Argued April 15, 1975 Decided May 1, 1975.)
Docket No. 74-2698

BUFFALO FORGE COMPANY,
Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I.W. ABEL, as International President, MITCHELL F. MAZUCA, Individually and as District Director, and JOHN GRUKA, Individually and as International Representative of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Individually and as President, and VALENTINE OLEJNICZAK, Individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Individually and as President, and ALFRED LIGAMARRI, Individually and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO,
Defendants-Appellees.

Before:
Kaufman, *Chief Judge,*
Smith and Timbers, *Circuit Judges.*

Appendix A.

Appeal from the order of the United States District Court for the Western District of New York, John T. Curtin, *Chief Judge*, denying preliminary injunction against strike called by unions party to collective bargaining agreements with no-strike and mandatory arbitration provisions. 29 U.S.C. §§ 104, 185(a). 386 F. Supp. 405 (1974).

Affirmed.

Jeremy V. Cohen, Buffalo, N.Y. (Flaherty, Cohen, Grande & Randazzo, P.C., Buffalo, N.Y.), *for Appellant.*

Rudolph L. Milasich, Jr., Pittsburgh, Pa. (Carl B. Frankel, Pittsburgh, Pa., of counsel); Bernard Kleiman (Kleiman, Cornfield & Feldman, Chicago, Ill.); Thomas P. McMahon (McMahon & Crotty, Buffalo, N.Y.); George H. Cohen (Bredhoff, Cushman, Gottesman & Cohen, Washington, D.C.) of counsel, *for Appellees.*

Smith, *Circuit Judge:*

This appeal raises a narrow but significant question of labor law of first impression in this court: If a union enters into a collective bargaining agreement establishing a mandatory arbitration procedure and including a no-strike clause and then later strikes *solely* out of deference to another union's lawful picket line at a place of employment common to the two unions, does a federal district court have authority under § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a),[1] to enjoin the strike or is it precluded from granting injunctive relief by § 4 of the Norris-La Guardia Act of 1932, 29 U.S.C. § 104?[2] Resolution of this issue requires interpretation of *Boys Market, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), where the Supreme Court set forth a general standard for reconciling the competing demands of the two statutory provisions in the context of a strike over a grievance which the parties are bound by agreement to submit to arbitration. In the case

[1] § 185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Appendix A.

[2] § 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following act:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

before us, the United States District Court for the Western District of New York, John T. Curtin, *Chief Judge,* determined that under *Boys Market* it was deprived of jurisdiction by § 4 of the Norris-La Guardia Act to issue a preliminary injunction sought by Buffalo Forge Company against the work stoppage generated by the defendant unions' order to its members to observe other employees' lawful picket line; the unions' obligations under the preexisting collective bargaining agreements to resolve disputes with management through a mandatory six-step settlement procedure culminating in arbitration and to refrain from authorizing strikes were deemed not controlling in light of Congress' stated antipathy to injunctions in § 4. 386 F. Supp. 405 (1974). After reviewing the divergent authority on the issue presented by this case,[3] we are convinced that Chief Judge Curtin has correctly construed the import of *Boys Market* and therefore affirm the order below.[4]

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[3] Cases supporting the district court's holding in this case include *Amstar Corp. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,* 468 F.2d 1372 (5th Cir. 1972); *General Cable Corp. v. The International Brotherhood of Electrical Workers, Local Union 1644, AFL-CIO,* 331 F. Supp. 478 (D. Md. 1971); *Simplex Wire and Cable Co. v. Local 2208 of the International Brotherhood of Electrical Workers, AFL-CIO,* 314 F. Supp. 885 (D. N.H. 1970). Contrary authority are *Napa Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926,* 502 F.2d 321 (3d Cir. 1974) (*en banc*), *cert. denied,* 43 U.S.L.W. 3328 (Dec. 9, 1974); *Monongahela Power Co. v. Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC,* 484 F.2d 1209 (4th Cir. 1973); *Inland Steel Co. v. Local Union No. 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir. 1974); *Barnard College in the City of New York v. Transport Workers Union of America, AFL-CIO,* 372 F. Supp. 211 (S.D.N.Y. 1974).

[4] The appellees also urge an alternative ground for affirmance: that the appellant is not entitled to injunctive relief because it has not made "every reasonable effort" to settle the dispute by negotiation, as required by 29 U.S.C. § 108. Since we concur in the district court's basis for denying the preliminary injunction, we need not reach the merits of this contention.

The United Steelworkers of America and two of its locals represent the production and maintenance employees of Buffalo Forge Company, a manufacturing and sales concern with three plants and offices in or nearby Buffalo, N.Y. The same international union and two other locals represent the company's office clerical and technical employees. On November 16, 1974, in negotiating their first collective bargaining agreement with Buffalo Forge, the unions representing the office clerical and technical employees went out on strike and began picketing all three of the company's Buffalo area sites. On November 18, the production and maintenance employees at one of the plants refused for the day to cross the picket lines. Three days later, the unions representing the production and maintenance employees at the three plants called a work stoppage at all the plants, which gave rise to this suit for damages and injunctive relief by Buffalo Forge against these unions and various named officers and agents of the unions. On December 13, the district court denied the company's request for a preliminary injunction and the instant appeal followed, 28 U.S.C. § 1292(a)(1).[5] The work stoppage then terminated on the next regular work day after the district court's order. The controversy remains a live one, however, for the office clerical and technical employees are still on strike and so long as their picketing continues, the work stoppage under review

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[5] § 1292. Interlocutory decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

• • •

may, as stipulated by the parties, "be resumed at any time in the near future."[6]

In *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962), the Supreme Court found that § 301(a) of the Labor Management Relations Act, which vests jurisdiction in federal district courts over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry representing commerce," in no way further qualifies the preexisting nonabsolute bar established by § 4 of the Norris-La Guardia Act to federal court injunctions "in any case involving or growing out of any labor dispute." The dissenting justices contended that the majority's decision was inconsistent with the strong congressional policy favoring settlement of labor-management differences by arbitration and with *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), and other recent Supreme Court cases attempting to give full play to that policy. Writing for the *Sinclair Refining* dissenters, Mr. Justice Brennan suggested an accommodation between the two statutory provisions:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-La Guardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an

[6] Joint Appendix at 2a.

> injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

Sinclair Refining, supra, 370 U.S. 195 at 228 (emphasis in original). Eight years later in *Boys Market*, Mr. Justice Brennan made the above suggestion the core of his majority opinion overruling *Sinclair Refining*. *Boys Market, supra*, 398 U.S. 235 at 254.

In assessing the extent to which § 301(a) modified the anti-injunction policy of Norris-La Guardia, we base the tenor of our inquiry on the Court's emphasis in *Boys Market* on the narrowness of its holding in favor of injunctive relief. *Id.* at 253. *Compare Emery Air Freight Corp. v. Local Union 295*, 449 F.2d 586, 588 (2d Cir. 1971). In narrowly construing the exception to § 4 of the Norris-La Guardia Act carved out by § 301(a) in the view of the *Boys Market* Court, then, we take particular note of the various indications in *Boys Market* and in the *Sinclair Refining* dissent upon which the latter drew that only strikes *over a grievance* which the union has agreed to arbitrate are within the scope of the exception. *See, e.g., Boys Market, supra*, 398 U.S. at 248, 254; *Sinclair Refining, supra*, 370 U.S. 195 at 217-18, 224-25, 228. The strike at issue in the instant case is not over a grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

This distinction is crucial in light of the need, recognized in *Boys Market* and the *Sinclair Refining* dissent, to reconcile the anti-injunction policy of Norris-La Guardia with the pro-arbitration policy of the later act. If a strike not seeking

redress of any grievance is enjoinable, then the policy of Norris-La Guardia is virtually obliterated. For since a no-strike provision, if not in fact present in the employment contract, will be implied where the agreement sets up mandatory arbitration machinery, *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95, 104-06 (1962), it is, as the Fifth Circuit has concluded, "difficult to conceive of any strike which could not be so enjoined." *Amstar Corp. v. Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO*, 468 F.2d 1372, 1373 (5th Cir. 1972). Undue expansion of the "narrow" holding in *Boys Market* may be avoided, on the other hand, by proper attention to the actual threat posed by strikes not over grievances with the employer to the policies promoted by § 301(a). A strike not seeking to pressure the employer to yield on a disputed issue is not an attempt to circumvent arbitration machinery established by the collective bargaining agreement. Accordingly, it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining such strikes. *See Napa Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926*, 502 F.2d 321, 330-31 (3d Cir. 1974) *(en banc)* (Hunter, *J.* & Seitz, *C.J.*, dissenting), *cert. denied*, 43 U.S.L.W. 3328 (Dec. 9, 1974); *Inland Steel Co. v. Local Union No. 1545, United Mine Workers of America*, 505 F.2d 293, 300-01 (8th Cir. 1974) (Fairchild, *J.*, dissenting).

Since the work stoppage under review is motivated solely by respect for other employees' picket lines[7] and plainly is not

[7] In the district court, Buffalo Forge claimed that the work stoppage was at least in part a protest against truck driving assignments to the production and maintenance employees. The district court determined that this claim was unsupported by the evidence before it, and the appellant expressly disclaims seeking to disturb the district court's finding on this appeal. Brief for Appellant at 10.

aimed at resolving an existing dispute by extra-arbitral means, the district court's order denying a preliminary injunction gave effect to § 4 of the Norris-La Guardia Act without disservice to the policies informing § 301(a) of the Labor Management Relations Act. Chief Judge Curtin's application of the two provisions to the context before him comported with the Supreme Court's direction to district courts in its *Boys Market* opinion to reconcile the two provisions rather than simplistically read a repeal of § 4 into the later enactment.

The order of the district court denying a preliminary injunction is therefore affirmed.

Affirmed.

APPENDIX B

Decision and Order of the United States District Court for the Western District of New York

UNITED STATES DISTRICT COURT
Western District of New York

BUFFALO FORGE COMPANY,

Plaintiff,

vs.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHELL F. MAZUCA, individually and as District Director, and JOHN GRUKA, individually and as International Representative of the UNITED STEELWORKERS OF AMERICA, AFL-CIO,

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, individually and as President; and VALENTINE OLEJNICZAK, individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, individually and as President; and ALFRED LIGAMMARI, individually and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO,

Defendants.

Civil 74-546

Appearances:

Flaherty, Cohen, Grande & Randazzo, P. C. (Jeremy V. Cohen, Esq., of Counsel) Buffalo, New York, for Plaintiff.

McMahon & Crotty (Thomas P. McMahon, Esq., of Counsel), Buffalo, New York, for Defendants.

Appendix B.

This is an action brought by the Buffalo Forge Company under Section 301 of the Labor-Management Relations Act (29 U.S.C. § 185), for a temporary restraining order and a preliminary and permanent injunction against the defendants, the United Steelworkers of America, AFL-CIO [International Union], Local Union No. 1874 and Local Union No. 3732, who are engaged in a work stoppage against the plaintiff. The summons and complaint in this action were filed and served on November 26, 1974. On the same day, pursuant to prior arrangement, counsel for plaintiff and defendants conferred with the court concerning plaintiff's application for a temporary restraining order. Because the papers were incomplete, counsel returned again on November 27. On that day the court directed plaintiff's counsel to submit further supporting affidavits, with copies to defendants' counsel, on Friday, November 29, and adjourned argument on plaintiff's request for a temporary retraining order until December 2, 1974 at 2:00 p.m. Counsel appeared as directed on December 2, 1974 and, after hearing argument, the court denied plaintiff's application for a temporary restraining order and directed counsel to appear for a hearing, with witnesses, on December 3, 1974 at 2:00 p.m. concerning plaintiff's application for a preliminary injunction. From this hearing and from the affidavits submitted by the parties, the court makes the following findings of fact.

Plaintiff is a corporation engaged in the manufacture and sale of pumps and air handling equipment at three separate plants and office facilities in the Buffalo, New York area: 490 Broadway, Buffalo, New York, Duke Road, Cheektowaga, New York, and Oliver Street, North Tonawanda, New York. Defendants' counsel has conceded that the court has jurisdiction of this matter pursuant to Section 301 of the Labor-Management Relations Act.

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For many years defendant International Union and defendant Locals 1874 and 3732 have represented plaintiff's production and maintenance employees under successive collective bargaining contracts. The current contract, by its terms, remains in full force and effect until September 28, 1975. There are actually two production and maintenance bargaining units, one represented by defendant International Union and Local 1874, covering approximately 930 employees at the Broadway and Duke Road plants, and the other represented by defendant International Union and Local 3732, covering approximately 83 employees at the Oliver Street plant.

Defendant International Union and two other affiliated Local Unions represent plaintiff's office, clerical and technical employees who are employed at the Broadway, Duke Road and Oliver Street facilities. Plaintiff and defendant International Union and these sister Locals (Locals No. 8267 and No. 8269) [sometimes hereinafter referred to as the Office Technical Unions] have been negotiating for several months on the first collective bargaining agreement covering plaintiff's office, clerical and technical employees. On Saturday, November 16, 1974, defendant International Union and the Office Technical Locals struck plaintiff and established picket lines at all of the plaintiff's Buffalo area facilities. This strike and picketing are continuing to date.

On Monday, November 18, 1974, Local 3732 engaged in a one-day work stoppage at the Oliver Street plant and refused to cross the Office and Technical Local's picket lines there. The next day Local 3732 returned to work and worked as scheduled until midmorning on Thursday, November 21. On that morning, at the direction and instruction of defendant International Union, Local 1874 and its members commenced a work stoppage at the Broadway and Duke Road plants,

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which has continued to date. Later the same morning, Local 3732 and its members walked off their jobs at the Oliver Street plant in North Tonawanda and, since that time, have refused to cross the picket lines established by the Office Technical Locals. Manufacturing operations at plaintiff's three plants have been completely halted.

The collective bargaining agreements in force between the plaintiff and defendants contain a no-strike clause and a mandatory procedure for the adjustment of grievances. The no-strike clause, Section 14b, provides in part:

> There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity.

The adjustment of grievances, Section 26, provides in part:

> Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this Agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences, . . .

Plaintiff contends that the no-strike clause prohibits the defendant Unions from refusing to cross the Office Technical Unions' picket lines because the differences between plaintiff and defendants must be submitted to the mandatory grievance and arbitration procedures set forth in the agreement. In the alternative, plaintiff argues that the work stoppage is the result of an incident which occurred on November 18, 1974 when one of plaintiff's supervisors ordered a plant truck driver, who is a member of one of the defendant Locals, to drive a non-Company owned tractor-trailer through the Of-

fice Technical Unions' picket lines. Both parties agree that if this work assignment resulted in a dispute between the parties and caused the walkout of defendant Locals, this dispute would be subject to the mandatory grievance procedures spelled out in the agreement, and that plaintiff would be entitled to the requested injunctive relief. For this reason, the court will first decide whether this incident was the cause of the work stoppage.

Plaintiff's position regarding this incident is principally set out in the affidavit and testimony of Robert E. Pfeil, Assistant Personnel Manager at Buffalo Forge. He related that on Monday, November 18, 1974, Valentine Zizzi and Valentine Olejniczak, President and Vice President, respectively, of Local 1874, complained to him about the order of the Company directing members of their Local to drive other companies' trucks through the picket lines. Mr. Pfeil said he was not acquainted with this problem and would look into it. According to Mr. Pfeil, they met again on November 19, 1974. (The parties agree that the next meeting occurred on November 20 and not on the 19th.) His testimony at the hearing was similar to the information set forth in his affidavit, which was as follows:

> Mr. Olejniczak said they did not object to our drivers positioning the vans or trailers for loading or unloading once the van was on company premises. I told Mr. Olejniczak and Mr. Zizzi that to the extent the company had assigned its truck drivers in the past to do what they were now complaining about, that the company would continue to make those assignments. I also said that our truck drivers would not drive another company tractor trailer into or out of the company's yard, but that we would probably continue to have our drivers hook up to another company's trailer with a Buffalo Forge Company

> tractor and drive the trailer into or out of the company premises. Neither Mr. Zizzi or Mr. Olejniczak seemed particularly pleased with my answer to their complaint but they left my office. I have had no conversation with them or they with me on this subject since.

Mr. Zizzi and Mr. Olejniczak agreed in substance with the recollection of Mr. Pfeil about the meetings, but state that when they left Mr. Pfeil's office, the problem was resolved to their satisfaction.

In support of the argument that the work stoppage was due to the order given to the truck drivers, the plaintiff called Anthony F. Kubacki, Lawrence Small and Elvin B. Morton, supervisory personnel. These men were present at the entrance to the plaintiff's Broadway plant on the morning of November 21, 1974, which was the first day of the work stoppage. Mr. Kubacki recalls that while in the presence of Mr. Small and Mr. Morton, he met with Mr. Olejniczak, who said that the reason why the Union would not come to work was because of the truck driver problem. Mr. Olejniczak denies making this statement to Mr. Kubacki. Mr. Small and Mr. Morton do not support the testimony of Mr. Kubacki about this conversation. Mr. Small recalls that he heard "someone" say "something" about a truck driver problem, and Mr. Morton recalls only that he heard Mr. Olejniczak say "truck driver" and "problem" but heard nothing else. Mr. Kubacki and Mr. Morton made written reports of this meeting, which were not produced at the hearing.

Mr. Small testified that on November 27, 1974 Stanley Grey, a member of the grievance committee, told him that the problem was over the truck drivers' dispute. At the hearing Mr. Grey denied making this statement. There is no other evidence to support Mr. Small's recollection of this event.

The contention of defendants that the work stoppage was not precipitated by the truck driver incident is confirmed by an event which occurred late on November 20. On that afternoon Darrell Stewart, Vice President of Buffalo Forge, learned that a work stoppage was planned for the following morning. He sent telegrams to officers of the Local Unions and the International Union setting forth the plaintiff's position that a work stoppage would be in violation of the agreement. In addition, he called into his office Mr. Marvin Pawlowski, an officer of the Local, and read the telegram to him. Mr. Pawlowski told Mr. Stewart that he had heard nothing of any planned walkout and that it was a complete surprise to him. If the cause of the work stoppage was the dispute about the truck drivers, it appears to the court that Mr. Pawlowski would have been aware of it and aware of the planned work stoppage. The plaintiff has not produced evidence sufficient to support its argument that the ordered movement of tractor-trailers through the picket line was the cause of the dispute.

The evidence supports defendants' position that the work stoppage came about because of the direction of the International Union to members of the defendant Locals to respect the picket lines of the Office Technical Union. This direction from the International Union was made at a meeting held with officers of the Local Unions on Wednesday, November 20, 1974 at about 11:30 a.m. It should be noted that the members of the defendant Unions have not engaged in the picketing which is being carried on by the members of the Office Technical Locals. Certain members of the defendant Locals have crossed the picket lines and gone to work.

The more essential questions in this case are whether the work stoppage by Locals 1874 and 3732 is a violation of the no-strike clause contained in the collective bargaining agreement, and whether the defendants are subject to the mandatory adjustment and grievance procedures of the agreement. In a suit brought pursuant to Section 301, before a federal court can enjoin a strike or walkout, the court must find (1) that the strike is in breach of a no-strike obligation under an effective agreement; (2) that the strike is over an arbitrable grievance, and (3) that both parties are contractually bound to arbitrate the underlying grievance which caused the strike. *Boys Markets v. Retail Clerks Union,* 398 U.S. 235 (1969); *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195, 228 (1961) (dissenting opinion), and *Amstar Corp. v. Amalgamated Meat Cutters & Butcher Workmen of North America,* 468 F.2d 1372 (5th Cir. 1972). In *Boys Markets* the Supreme Court adopted the principles set forth in the dissenting opinion in *Sinclair* to determine when an injunction could issue:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which the injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. 370 U.S., at 228. (Emphasis in original.)

The *Boys Markets* standards do not apply to this case because there is no arbitrable grievance between the parties. The dispute here is between the plaintiff and the striking members of the Office Technical Workers Local. That strike preceded and precipitated the work stoppage of the defendant Locals. This court agrees with the reasoning of the Court of Appeals for the Fifth Circuit in *Amstar, supra,* which said:

> . . . The strike by the Chalmette employees was not "over a grievance" which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute—the validity under the Union's no-strike obligation of the member-employees honoring the ILA picket lines. Were we to hold that the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrate underlying dispute for a *Boys Markets* injunction to issue, it is difficult to conceive of any strike which could not be so enjoined. The *Boys Markets* holding was a "narrow one," not intended to undermine the vitality of the anti-injunction provision of the Norris-LaGuardia Act. Indeed, the Supreme Court specifically stated that its decision did not mean "that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance."
>
> 468 F.2d at 1373.

The court has carefully considered the cases cited by plaintiff but, in almost every instance, these cases are distinguishable from the one before the court. In *Inland Steel Co. v. Local Union 1545, United Mine Workers,* 43 U.S.L.W. 2205 (7th Cir. October 22, 1974), in addition to the no-strike clause and mandatory grievance procedure, the contract provided that "matters not specifically mentioned" in the agreement were covered by the grievance procedure. The cases of *NAPA Pittsburgh, Inc. v. Automobile Local No. 926,*

502 F.2d 321 (3d Cir. 1974), and *Wilmington Shipping Co. v. Longshoremen,* Civ. No. 73-2354 (4th Cir. June 19, 1974), *cert. denied,* November 18, 1974, also involved agreements with additional provisions. *NAPA* dealt with a clause in the collective bargaining agreement between the parties that covered the union's honoring a primary strike against the employer, and *Wilmington* dealt with a clause providing for the union's honoring a "bona fide" picket line. In the instant case, no such additional language appears. Although the cases of *Monongahela Power Co. v. Local No. 2332 IBEW,* 484 F.2d 1209 (4th Cir. 1973), and *Barnard College v. Transport Workers,* 372 F.Supp. 211 (S.D.N.Y. 1974), dealt with agreements which contained no additional language and appear to support plaintiff's position, nevertheless, the court finds that the cases cited by the defendents are controlling. *Amstar, supra; Simplex Wire and Cable Co. v. Local 2208 of the International Brotherhood of Electrical Workers,* 314 F.Supp. 885 (D.C.N.H. 1970); *General Cable Corp. v. International Brotherhood of Electrical Workers,* 331 F.Supp. 478 (D.C. Md. 1971). As in the instant case, in all of these cases there was no contractual provision found restricting the union's right to honor picket lines of other labor organizations. Therefore, from the foregoing findings of fact and conclusions of law, plaintiff's application for a preliminary injunction is hereby denied.

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: December 13, 1974.